IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.51310 of 2006

T.K.SINHA, son of Late Ramanugrah Prasad Sinha, resident of Flat No. 2435, Sector-D, Pocket-2, Vasant Kunj, New Delhi----------Petitioner

Versus

1.THE REGISTRAR OF COMPANIES, Bihar and Jharkhand, Mourya Lok Complex, 4th Floor, Block-A Dak Bunglow Road, Patna- 800 001

2. Union of India, through the Regional Director, Department of Company Affairs, Koklata----------Opp. party

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For the petitioner : M/S Amrendra Narayan, Ray Sourabh Nath
For the Union of India :Mr.Rakesh Kumar Singh, Central Govt.counsel

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17. 23/10/2008 This application has been filed for quashing the order dated 2.6.2006 passed by learned Special Judge, Economic Offences, Patna, in Complaint case no. 412 of 2006 and the entire proceeding as against this petitioner T.K.Sinha under Section 56(3) of the Companies Act.

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The complaint has been filed by the Registrar of the Companies against Dr.Shishupal Ram, Smt. Nilam Agrawal, Sri Ashok Kumar Shah, Sri Sandeep Kr.Gagodia, Sri G.D.Sharma and this petitioner T.K.Sinha as Directors of the Company, namely, Blue Heavens Agro Industries Limited.

The prosecution has been instituted at the instance of the Registrar of the Companies and it is alleged that a company was incorporated under the name of M/s Blue Heavens Agro Industries Limited on 26.5.1994 with the Registrar of the Companies, Patna. It is further alleged that the said company was being set up with collaboration

of German experts. It is alleged that in view of the audit balancesheet filed by the company in 2000-2001. It has been found that the company has failed to keep up the promises as made in the prospectus.

The Company, namely, M/s. Blue Heavens Agro Industries Ltd. was registered on 26.5.1994 under the name of "Blue Heavens Flowers and Tissue Culture Limited" as a public Limited Company. The object of the company was to establish and carry on the business, inter alia, as manufacturers, growers, processors, dealers, importers and exporters of all types of flowers, mushrooms, agricultural products and tissue culture of all kinds and their by products amongst other things.

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For the purpose of deciding the matter regarding continuance of the proceeding against the petitioner being one of the Directors of the Company, it would be relevant to mention that in the quashing application several facts have been referred by the learned counsel for the petitioner and denied by the learned counsel for the other side by filing supplementary and counter affidavits. But it would be relevant to mention that the petitioner, who was one of the

Directors of the Company, is said to be non-Executive Director of the Company. The fact is that on 27.3.1995 the Board of Directors of the Company authorized Dr. Ajay Kumar Ram to carry out day to day affairs of the Company in absence of appointment of Managing Director. The Board passed the resolution that in absence of appointment of Managing Director of the Company Blue Heavens Agro Industries Ltd. Dr.A.K.Ram is hereby authorized to carry out and manage the day to day affairs and to negotiate, arrange, execute agreements and other legal documents and formalities with financial institution, Banks Government of India, Foreign collaborators, consultants, Merchant Bankiers, supplier of plant and Machinery, Technical know-how, builders, contractors and experts and to engage and appoint any person, institution and bodies for the project and purpose of the Company. His Acts and statements shall be binding on the Company. It has further been averred that Resolution dated 14.2.1998 by which Ajay Kumar Ram was appointed as President of the Company and he was required to carry out day to day management of the Company.

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From the aforesaid facts it would be revealed that the petitioner is/was not an active Director of the Company and, so, he cannot be held responsible to see day to day affairs of the Company.

Learned counsel by referring several paragraphs of the petition has attempted to justify that due to some non-participation of the foreign collaborators and thereby withholding of necessary equipments and plants by foreign collaborators the plan of the Company could not be executed.

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Here it would be relevant to mention that facts of this case as also other cases are more or less similar and one of the Directors of the Company, namely, T.K.Sinha, prosecution against whom stood quashed by Hon'ble Mr.Justice Navaniti Prasad Singh in Cr.Misc.No. 38582 of 2005 vide order dated 16.5.2006. Similarly, other Director of the Company Dr.Sishupal Ram and others, against whom also proceeding stood quashed by Hon'ble Mrs. Justice Seema Ali Khan in Cr.Misc.No. 39653 of 2004 vide order dated 4.1.2007. The allegation in respect of all the cases are more or less the same. So far this

petitioner is concerned, it has been held that he has already resigned and it would not be desirable to prolong the proceeding against him for the same set of facts.

The very continuation of proceeding against the petitioner will amount to an abuse of process of law and, so, the same stands quashed. The impugned order is set aside.

In the result, this application is allowed.

(Subash Chandra Jha,J.)

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